

terms by either election of members by a special election process or by a school board election process if at least three school board members serving were elected by parents. Members elected to fill unexpired terms shall not serve more than one year, unless elected by parents of the students.

(vii) The responsibility for developing the plans for and conducting the school board election rests with the Superintendent and the school board.

[52 FR 44389, Nov. 19, 1987, as amended at 53 FR 49981, Dec. 13, 1988]

**§ 68.7 Effective date and implementation.**

This part is effective October 16, 1987. The Secretary of each Military Department shall forward two copies of the Military Department's implementing documents to the ASD(FM&P) within 120 days.

**PART 69—SCHOOL BOARDS FOR DEPARTMENT OF DEFENSE DOMESTIC DEPENDENT ELEMENTARY AND SECONDARY SCHOOLS**

Sec.

69.1 Purpose.

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AUTHORITY: 10 U.S.C. 2164.

SOURCE: 61 FR 60563, Nov. 29, 1996, unless otherwise noted.

**§ 69.1 Purpose.**

This part prescribes policies and procedures for the establishment and operation of elected School Boards for schools operated by the Department of Defense (DoD) under 10 U.S.C. 2164, 32 CFR part 345, and Public Law 92-463.

**§ 69.2 Applicability and scope.**

This part applies to:

(a) The Office of the Secretary of Defense (OSD), the Military Departments, the Coast Guard when operating as a service of the Department of the Navy or by agreement between DoD and the Department of Transportation, the Chairman of the Joint Chiefs of Staff, the Unified and Specified Combatant

Commands, the Inspector General of the Department of Defense, the Uniformed Services University of the Health Sciences, the Defense Agencies, and the DoD Field Activities.

(b) The schools (prekindergarten through grade 12) operated by the DoD under 10 U.S.C. 2164 and 32 CFR part 345 within the continental United States, Alaska, Hawaii, Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands, known as DoD DDESS Arrangements.

(c) This part does not apply to elected school boards established under state or local law for DoD DDESS special arrangements.

**§ 69.3 Definitions.**

(a) *Arrangements.* Actions taken by the Secretary of Defense to provide a free public education to dependent children under 10 U.S.C. 2164 through DoD DDESS arrangements or DoD DDESS special arrangements:

(1) *DDESS arrangement.* A school operated by the Department of Defense under 10 U.S.C. 2164 and 32 CFR 345 to provide a free public education for eligible children.

(2) *DDESS special arrangement.* An agreement, under 10 U.S.C. 2164, between the Secretary of Defense, or designee, and a local public education agency whereby a school or a school system operated by the local public education agency provides educational services to eligible dependent children of U.S. military personnel and federally employed civilian personnel. Arrangements result in partial or total Federal funding to the local public education agency for the educational services provided.

(b) *Parent.* The biological father or mother of a child when parental rights have not been legally terminated; a person who, by order of a court of competent jurisdiction, has been declared the father or mother of a child by adoption; the legal guardian of a child; or a person in whose household a child resides, provided that such person stands in *loco parentis* to that child and contributes at least one-half of the child's support.

**§ 69.4 Policy.**

(a) Each DoD DDESS arrangement shall have an elected school board, established and operated in accordance with this part and other pertinent guidance.

(b) Because members of DoD DDESS elected school boards are not officers or employees of the United States appointed under the Appointments Clause of the United States Constitution (Art. II, Sec. 2, Cl. 2), they may not exercise discretionary governmental authority, such as the taking of personnel actions or the establishment of governmental policies. This part clarifies the role of school boards in the development and oversight of fiscal, personnel, and educational policies, procedures, and programs for DoD DDESS arrangements, subject to these constitutional limitations.

(c) The DoD DDESS chain of command for matters relating to school arrangements operated under 10 U.S.C. 2164 and 32 CFR part 345 shall be from the Director, DoD DDESS, to the Superintendent of each school arrangement. The Superintendent will inform the school board of all matters affecting the operation of the local school arrangement. Direct liaison among the school board, the Director, and the Superintendent is authorized for all matters pertaining to the local school arrangement.

**§ 69.5 Responsibilities.**

The Assistant Secretary of Defense for Force Management Policy (ASD (FMP)), under the Under Secretary of Defense for Personnel and Readiness, shall:

(a) Make the final decision on all formal appeals to directives and other guidance submitted by the school board or Superintendent.

(b) Ensure the Director, DoD DDESS shall:

(1) Ensure the establishment of elected school boards in DoD DDESS arrangements.

(2) Monitor compliance by the Superintendent and school boards with applicable statutory and regulatory requirements, and this part. In the event of suspected noncompliance, the Director, DoD DDESS, shall take appropriate action, which will include notification of

the Superintendent and the school board president of the affected DoD DDESS arrangement.

(3) Determine when the actions of a school board conflict with an applicable statute, regulation, or other guidance or when there is a conflict in the views of the school board and the Superintendent. When such conflicts occur, the Director, DoD DDESS, shall assist the Superintendent and the school board in resolving them or direct that such actions be discontinued. Such disapprovals must be in writing to the school board and the Superintendent concerned and shall state the specific supporting reason or reasons.

(c) Ensure the school board for DoD DDESS arrangements shall:

(1) Participate in the development and oversight of fiscal, personnel, and educational policies, procedures, and programs for the DoD DDESS arrangement concerned, consistent with this part.

(2) Approve agendas and prepare minutes for school board meetings. A copy of the approved minutes of school board meetings shall be forwarded to the Director, DoD DDESS, within 10 working days after the date the minutes are approved.

(3) Provide to the Director, DoD DDESS, names of applicants for a vacancy in the Superintendent's position after a recruitment has been accomplished. The school board shall submit to the Director, DoD DDESS, a list of all applicants based on its review of the applications and interviews (either in person or telephonically) of the applicants. The list of applicants will be accompanied by the recommended choice of the school board. The Director will select the Superintendent and will submit written notice with justification to the school board if the recommendation of the school board is not followed.

(4) Prepare an annual written on-site review of the Superintendent's performance for consideration by the Director, DoD DDESS. The written review shall be based on critical elements recommended by the school board and Superintendent and approved by the Director, DoD DDESS. The school board's review will be an official attachment to the Superintendent's appraisal.

(5) Participate in the development of the school system's budget for submission to the Director, DoD DDESS, for his or her approval as endorsed by the school board; and participate in the oversight of the approved budget, in conjunction with the Superintendent, as appropriate for operation of the school arrangement.

(6) Invite the Superintendent or designee to attend all school board meetings.

(7) Provide counsel to the Superintendent on the operation of the school and the implementation of the approved budget.

(8) Channel communications with school employees to the DoD DDESS Superintendent. Refer all applications, complaints, and other communications, oral or written, to the DoD DDESS Arrangement Superintendents.

(9) Participate in the development of school policies, rules, and regulations, in conjunction with the Superintendent, and recommend which policies shall be reflected in the School Policy Manual. At a minimum, the Policy Manual, which shall be issued by the Superintendent, shall include following:

(i) A statement of the school philosophy.

(ii) The role and responsibilities of school administrative and educational personnel.

(iii) Provisions for promulgation of an annual school calendar.

(iv) Provisions on instructional services, including policies for development and adoption of curriculum and textbooks.

(v) Regulations affecting students, including attendance, grading, promotion, retention, and graduation criteria, and the student code of rights, responsibilities, and conduct.

(vi) School policy on community relations and noninstructional services, including maintenance and custodial services, food services, and student transportation.

(vii) School policy and legal limits on financial operations, including accounting, disbursing, contracting, and procurement; personnel operations, including conditions of employment, and labor management regulations; and the

processing of, and response to, complaints.

(viii) Procedures providing for new school board member orientation.

(ix) Any other matters determined by the school board and the superintendent to be necessary.

(10) Under 10 U.S.C. 2164(b)(4)(B), prepare and submit formal appeals to directives and other guidance that in the view of the school board adversely impact the operation of the school system either through the operation and management of DoD DDESS or a specific DoD DDESS arrangement. Written formal appeals with justification and supporting documentation shall be submitted by the school board or Superintendent to ASD(FMP). The ASD(FMP) shall make the final decision on all formal appeals. The Director, DoD DDESS, will provide the appealing body written review of the findings relating to the merits of the appeal. Formal appeals will be handled expeditiously by all parties to minimize any adverse impact on the operation of the DoD DDESS system.

(d) Ensure school board operating procedures are as follows:

(1) The school board shall operate from a written agenda at all meetings. Matters not placed on the agenda before the start of the meeting, but approved by a majority of the school board present, may be considered at the ongoing meeting and added to the agenda at that time.

(2) A majority of the total number of school board members authorized shall constitute a quorum.

(3) School board meetings shall be conducted a minimum of 9 times a year. The school board President or designee will provide school board members timely notice of all meetings. All regularly scheduled school board meetings will be open to the public. Executive session meetings may be closed under 10 U.S.C. 2164(d)(6).

(4) The school board shall not be bound in any way by any action or statement of an individual member or group of members of the board except when such action or statement is approved by a majority of the school board members during a school board meeting.

(5) School board members are eligible for reimbursement for official travel in accordance with the DoD Joint Travel Regulations and guidance issued by the Director, DoD DDESS.

(6) School board members may be removed by the ASD (FMP) for dereliction of duty, malfeasance, or other grounds for cause shown. The school board concerned may recommend such removal with a two-thirds majority vote. Before a member may be removed, the member shall be afforded due process, to include written notification of the basis for the action, review of the evidence or documentation considered by the school board, and an opportunity to respond to the allegations.

#### **§ 69.6 Procedures.**

(a) *Composition of school board.* (1) The school board shall recommend to the Director, DoD DDESS, the number of elected school board voting members, which shall be not fewer than 3 and no more than 9, depending upon local needs. The members of the school board shall select by majority vote of the total number of school board members authorized at the beginning of each official school board term, one member to act as President and another to act as Vice President. The President and Vice President shall each serve for 1 year. The President shall preside over school board meetings and provide leadership for related activities and functions. The Vice President shall serve in the absence of the President. If the position of President is vacated for any reason, the Vice President shall be the President until the next regularly scheduled school board election. The resulting vacancy in the position of the Vice President shall be filled by the majority vote of all members of the incumbent board.

(2) The DoD DDESS Arrangement Superintendent, or designee, shall serve as a non-voting observer to all school board meetings. The Installation Commander, or designee, shall convey command concerns to the school board and the Superintendent and keep the school board and the Superintendent informed of changes and other matters within the host installation that affect school expenditures or operations.

(3) School board members may not receive compensation for their service on the school board.

(4) Members of the school board may not have any financial interest in any company or organization doing business with the school system. Waivers to this restriction may be granted on a case-by-case basis by the Director, DoD DDESS, in coordination with the Office of General Counsel of the Department of Defense.

(b) *Electorate of the school board.* The electorate for each school board seat shall be composed of parents of the students attending the school. Each member of the electorate shall have one vote.

(c) *Election of school board members.* (1) To be elected as a member of the school board, an individual must be a resident of the military installation in which the DoD DDESS arrangement is located, or in the case of candidates for the Antilles Consolidated School System School Board, be the parent of an eligible child currently enrolled in the school system. Personnel employed by a DoD DDESS arrangement may not serve as school board members.

(2) The board shall determine the term of office for elected members, not to exceed 3 years, and the limit on the number of terms, if any. If the board fails to set these terms by the first day of the first full month of the school year, the terms will be set at 3 years, with a maximum of 2 consecutive terms.

(3) When there is a sufficient number of school board vacancies that result in not having a quorum, which is defined as a majority of seats authorized, a special election shall be called by the DoD DDESS Arrangement Superintendent or designee. A special election is an election that is held between the regularly scheduled annual school board election. The nomination and election procedures for a special election shall be the same as those of regularly scheduled school board elections. Individuals elected by special election shall serve until the next regularly scheduled school board election. Vacancies may occur due to the resignation, death, removal for cause, transfer, or disenrollment of a school board

member's child(ren) from the DoD DDESS arrangement.

(4) The board shall determine a schedule for regular elections. Parents shall have adequate notice of the time and place of the election. The election shall be by secret ballot. All votes must be cast in person at the time and place of the election. The candidate(s) receiving the greatest number of votes shall be elected as school board member(s).

(5) Each candidate for school board membership must be nominated in writing by at least one member of the electorate to be represented by the candidate. Votes may be cast at the time of election for write-in candidates who have not filed a nomination petition if the write-in candidates otherwise are qualified to serve in the positions sought.

(6) The election process shall provide staggered terms for board members; e.g., on the last day of the last month of each year, the term for some board members will expire.

(7) The DoD DDESS Superintendent, in consultation with the school board, shall be responsible for developing the plans for nominating school board members and conducting the school board election and the special election process. The DoD DDESS Superintendent shall announce election results within 7 working days of the election.

## PART 70—DISCHARGE REVIEW BOARD (DRB) PROCEDURES AND STANDARDS

### Sec.

- 70.1 Reissuance and purpose.
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- 70.8 Discharge review procedures.
- 70.9 Discharge review standards.
- 70.10 Complaints concerning decisional documents and index entries.
- 70.11 DoD semiannual report.

AUTHORITY: 10 U.S.C. 1553 and 38 U.S.C. 101 and 3103, as amended.

SOURCE: 47 FR 37785, Aug. 26, 1982, unless otherwise noted.

### § 70.1 Reissuance and purpose.

This part is reissued and:

(a) Establishes uniform policies, procedures, and standards for the review of discharges or dismissals under 10 U.S.C. 1553.

(b) Provides guidelines for discharge review by application or on motion of a DRB, and the conduct of discharge reviews and standards to be applied in such reviews which are designed to ensure historically consistent uniformity in execution of this function, as required under Pub. L. 95-126.

(c) Assigns responsibility for administering the program.

(d) Makes provisions for public inspection, copying, and distribution of DRB documents through the Armed Forces Discharge Review/Correction Board Reading Room.

(e) Establishes procedures for the preparation of decisional documents and index entries.

(f) Provides guidance for processing complaints concerning decisional documents and index entries.

### § 70.2 Applicability.

The provisions of this part 70 apply to the Office of the Secretary of Defense (OSD) and the Military Departments. The terms, "Military Services," and "Armed Forces," as used herein, refer to the Army, Navy, Air Force and Marine Corps.

### § 70.3 Definitions.

(a) *Applicant*. A former member of the Armed Forces who has been discharged or dismissed administratively in accordance with Military Department regulations or by sentence of a court-martial (other than a general court-martial) and under statutory regulatory provisions whose application is accepted by the DRB concerned or whose case is heard on the DRB's own motion. If the former member is deceased or incompetent, the term "applicant" includes the surviving spouse, next-of-kin, or legal representative who is acting on behalf of the former member. When the term "applicant" is used in §§ 70.8 through 70.10, it includes the applicant's counsel or representative, except that the counsel or representative may not submit an application for review, waive the applicant's